

mensurate disturbance in other functions of the liver. The presence of a normal amount of bilirubin in the serum and the absence of dye retention will not exclude hepatic disease. Positive tests, on the other hand, are of great value in indicating the probable presence of definite and widespread hepatic damage. Although the present hepatic functional tests are not ideal, their introduction is another milestone on the road to the better understanding of diseases of the liver.”

END RESULTS OF TONSILLECTOMY WITH SPECIAL REFERENCE TO THE LEGAL RESPONSIBILITY

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(Delivered before the New York Academy of Medicine, December 17, 1925)

Abstract

The operation of tonsillectomy at the present time is much to the fore. Its seriousness has been minimized to such an extent that the general practitioner regards himself competent to perform it. The inevitable consequences are that among the innumerable operations performed many bad results have taken place and many accounts of damage suits at present are current. The purpose of this discussion is to ascertain just what the grounds for these actions have been and to know what legal rights and responsibilities a surgeon has in performing this operation. A questionnaire was sent out to one thousand laryngologists inquiring about all suits threatened or begun of which they were aware. Replies were received for the most part from trained operators and so are not an entirely accurate criterion, but a sufficient number was received from all parts of the country to warrant a careful analysis and drawing certain conclusions. Of one hundred and twenty-four cases threatened or instituted only four were decided in favor of the plaintiff; fifteen were decided in favor of the defendant. The grounds for action included, negligence or carelessness during or subsequent to operation, twenty-five; post operative hemorrhage, nine; lung

abscess, five; breaking of needle, one; anaesthesia, thirteen; operating without permission, five; death due to operation, thirty-one; operating during or too soon after diphtheria, four; removal and sloughing of palate, twelve; removal of uvula, sixteen; removal or contraction of pillars, eight; teeth knocked out, five; death due to operation, thirty-one; loss of singing voice and speaking voice, four.

Cases occurring in New York State, fifteen; cases dismissed by judge, twelve; cases settled out of court, twenty-four; cases that came to trial and later appealed, five.

Judicial opinions are handed down only in appealed cases. Of these the number is few, only five. The opinions in three of these are of particular interest. In the first case, the higher court sustained the findings of the lower court in declaring that it was within the judgment of a surgeon to select the form of anaesthetic, local or general, which he thought best in a given case. In the second case, one for negligence in cutting the tongue during the operation, the higher court held that carelessness and negligence in performing the operation was a just cause for action. The third case, in which a causal connection was claimed between certain physical ailments and loss of uvula during the operation, the higher court sustained the findings of the jury in favor of the plaintiff as far as the resulting injury and damages were concerned.

The one outstanding principle in malpractice suits recognized by courts in all states is forcibly illustrated in four cases decided in favor of the plaintiff, namely, that want of ordinary and reasonable care leading to a bad result is legitimate ground for action. The following deductions seem warrantable:

- I. The number of malpractice suits in the eastern states at least does not appear to be at all in proportion to the total number of tonsil operations.
- II. The actual number undoubtedly is on the increase. This is due in part to the greatly increased number of operations and in part to the incompetency of the operator.
- III. The bringing of such suits is dependent in most instances on injudicious criticism of brother practitioners or on efforts of commercial lawyers.

- IV. Almost every conceivable ground for action has been employed but not one of these per se renders the operator liable to action. All depend on the single question, did he exercise reasonable care and skill in the operation and after care.

The surgeon must constantly recognize his potential liability. He is at liberty to operate wherever he may choose, but the operation is a capital one and whenever possible should be performed in a well equipped hospital.

The want of ordinary and reasonable care leading to a bad result is the most common of all grounds for action. To establish this, testimony of an expert witness is necessary. Most bad results are due to incompetency on the part of the operator. There is a pressing need for the public to be educated upon the importance of the tonsil operation and of the necessity of this being performed by a competent operator. The largest step in this direction is the recent organizing of the American Board of Oto-Laryngology, composed of representatives of the four national societies specializing in these subjects, which passes on the qualifications of candidates and when satisfied of their competency, awards a certificate of approval. General support of this movement by all the credited laryngologists will greatly assist in discarding the so-called "six weeks specialists." In spite of the fortunate experience of most of us in never having been annoyed by a malpractice suit, it is possible for it to occur to anyone even after the greatest care has been exercised. On that account the defense work done by the several state societies and especially that of our own state society is deserving of the heartiest commendation.

PROPOSED CHANGES IN THE CONSTITUTION AND BY-LAWS OF THE NEW YORK ACADEMY OF MEDICINE

The development of the work of the Academy during the last twenty years has indicated the necessity of altering and clarifying many of the provisions of the Constitution and By-Laws.